No. 85-993

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

PAULA A. HOBBIE, *Appellant*,

v.

UNEMPLOYMENT APPEALS COMMISSION AND LAWTON AND COMPANY, *Appellees*.

On Appeal From The District Court Of Appeals Of The State Of Florida Fifth District

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BRIEF OF COUNCIL ON RELIGIOUS FREEDOM AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT

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INTEREST OF THE AMICUS CURIAE

The Council on Religious Freedom is a nonprofit corporation formed to uphold and promote the principles of religious liberty. The objectives and purposes of the organization include taking action to eliminate religious discrimination in public and private employment and other areas of concern which interfere with the full experience of religious freedom.

The Board of Directors of the Council on Religious Freedom is composed of individuals who are active in

religious affairs, some in official capacity, and some on a lay basis, but all recognize the importance of preserving and promoting the concept of the constitutional principle of the "free exercise of religion" and opposing any encroachment by private or governmental agenices which limit or tend to inhibit the free exercise of religion.

SUMMARY OF ARGUMENT

In this case Hobbie was denied unemployment benefits under a portion of the Florida statute that held an individual ineligible for employment benefits on the basis of "misconduct."

In this Court's ruling in *Sherbert* v. *Verner*, 374 U.S. 398 (1963), and *Thomas* v. *Review Board*, 450 U.S. 707 (1981), it was determined that the First Amendment required that religious convictions which proscribed secular work during an employee's Sabbath hours be considered "good cause" for refusing to accept work. It would also be a violation of an individual's constitutional rights to allow a state to label the same employee's actions "misconduct connected with . . . work."

The standard of "misconduct" present in the Florida statute clearly sets up a mechanism for individual exemptions. To classify the religiously-motivated actions of Hobbie as misconduct shows a much greater hostility towards religion than was present in *Sherbert* and *Thomas*. The principles applied in *Sherbert* and *Thomas* should, therefore, control the results in this case.

The fact that the conflict between an individual's religious practices and an employer's work requirements resulted from a recent religious conversion, as distinguished from a pre-existing religious conviction, has no constitutional significance so long as those beliefs are

sincerely held. The Free Exercise Clause protects not only the right to hold a belief but the equally important right to change a belief.

ARGUMENT

I. THIS CASE IS CONTROLLED BY THE COURT'S DECISION IN *SHERBERT* v. *VERNER* AND *THOMAS* v. *REVIEW BOARD*.

In *Sherbert* v. *Verner*, 374 U.S. 398 (1963), this Court ruled that unemployment benefts could not be denied to a worker who refused to accept employment that would have required her to work on her Sabbath in violation of her religious beliefs. For 23 years *Sherbert* has stood as a landmark in the field of religious free exercise. The strength of the principles announced in *Sherbert* were reaffirmed just five years ago in *Thomas* v. *Review Board*, 450 U.S. 707 (1981), when this Court ruled that unemployment benefits could not be denied to a worker who quit his job because his religious beliefs did not allow him to work in the manufacture of armaments.

The continued vitality of these principles in the area of unemployment compensation was most recently recognized in *Gleason* v. *Blanche*, No. CA-4779 (La. Ct. App. April 11, 1986), (the court rules that, under holding of *Thomas* v. *Review Board*, the unemployment review board must consider free exercise rights of a woman discharged for religious based refusal to wear pants uniform after conversion to new religion).

In ruling that the denial of benefits imposed a burden on Mrs. Sherbert's free exercise of religion, the Court said:

> Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling

> forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

Sherbert, 374 U.S, at 404.

This Court in *Thomas* held:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

Thomas, U.S., at 717-718.

In *Sherbert*, the South Carolina statute denied unemployment benefits to a worker who "failed, without good cause, . . . to accept available suitable work when offered him by the employment office or the employer." *Sherbert*, 374 U.S., at 400, n.3. In *Thomas*, the Indiana statute denied benefits to a worker "who ha[d] voluntarily left his employment without good cause in connection with the work. . . " *Thomas*, 450 U.S., at 710, n.1

In this case Hobbie was denied benefits under a portion of the Florida statute declaring ineligible individuals "discharged by his employing unit for misconduct connected with his work." Section 443.100, Florida Statutes.[1]

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[1] The pertinent portions of the Florida statute are as follows:

Section 443.101, Florida Statutes: An individual shall be disqualified for benefits: (1)(a) for the week in which he has voluntarily left his employment without good cause attributable to his employer or in which he has been discharged by his employing unit for misconduct connected with his work, if so found by the division.

Section 443.036(24), Florida Statutes: "Misconduct" includes, but is not limited to, the following which shall not be construed in *pari materia* with each other:

(a) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee; or

(b) Carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent or evil design, or to allow an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

In *Sherbert* and *Thomas*, the Court concluded that the First Amendment required that the religious convictions of the claimants be considered "good cause" for refusing to accept work or voluntarily quitting work. It would be a grievous violation of the Free Exercise Clause for the State of Florida to be allowed to label the observance of the same religious belief that was at issue in *Sherbert* as "misconduct connected with . . . work."

Chief Justice Burger, writing in *Bowen* v. *Roy*, 54 U.S.L.W. 4603 (U.S. June 11, 1986), stated:

> The "good cause" standard [existing in *Sherbert* and *Thomas*] created a mechanism for individualized exemptions. If a state creates such a mechanism, its refusal to extend an exemption to an instance of religious hardship suggests a discriminatory intent. Thus, as was urged in *Thomas*, to consider a religiously motivated resignation to be "without good cause" tends to exhibit hostility, not neutrality, towards religion.

Id., at 4607-4608.

The standard of "misconduct" present in the Florida statute clearly sets up a mechanism for individual exemptions. To classify the observance of a religious belief as misconduct shows a much greater hostility towards religion than was present in *Sherbert* or *Thomas*.

II. THIS CASE IS NOT DISTINGUISHABLE FROM *SHERBERT* AND *THOMAS* BECAUSE OF THE RELIGIOUS CONVERSION OF THE APPELLANT.

Any argument that this case should be distinguished from *Sherbert* and *Thomas* because the conflict between Hobbie's religious beliefs and the requirements of her employer arose after her religious conversion as opposed to a change in the work requirements must be rejected. The Free Exercise Clause protects not only the right to hold a belief, but the right to change one's beliefs.

> If judicial inquiry into the truth of one's religious beliefs would violate the free exercise clause, *see United States* v. *Ballard*, *supra*, 332 U.S. at 87, 64 S.Ct. at 886, an inquiry into one's reasons for adopting those beliefs is similarly intrusive. So long as one's faith is religiously based at the time it is asserted, it should not matter, for constitutional purposes, whether that faith derived from revelation, study, upbringing, gradual evolution, or some source that appears entirely incomprehensible.

Callahan v. *Woods*, 658 F.2d 679, 687 (9th Cir. 1981).

Newly held beliefs are protected no less than lifelong beliefs. *Stevens* v. *Berger*, 428 F.Supp. 896, 900 (E.D. N.Y. 1977).

The argument that Hobbie was the "agent of change" and is therefore in some way entitled to less protection than was afforded in *Sherbert* and *Thomas* indicates a perception that religious conversion is some sort of whimsical choice on the part of the believer. This perception shows a basic misunderstanding of the fundamental nature of religious beliefs. Religious beliefs by their nature are compelling. The language of a religion is replete with terms that demonstrate this fact. One answers a "calling" from God. One observes the "dictates" of his or her religion. The Latin root of the word "religion" means "to bind." *See*, *Websters' New Universal Unabridged Dictionary*, at 1527 (2nd Ed. 1983).

One of the central policies of the Free Exercise Clause is to prevent an individual from being put into a position of having to choose between the dictates of his or her religion and the commands of the government. *Sherbert*, 374 U.S., at 404. Once Hobbie became convicted of the truth of the teachings of the Seventh-day Adventist Church, her conversion was compelled, and she was bound to follow the dictates of that church.

One final point weighs against any argument based on Hobbie's being the "agent of change." After her conversion, Hobbie worked out an accommodation with her supervisor that allowed her to observe the Sabbath. This arrangement worked smoothly for two months. At that point, Hobbie's employer unilaterally decided to end this accommodation and require Hobbie to work on the Sabbath. Under these facts, this case is no different than *Sherbert* in which a change in work schedules caused the conflict leading to discharge.

CONCLUSION

Sherbert and *Thomas* are cornerstones in the foundation of free exercise protections. They are the controlling law in this case. This Court should correct a clear error in constitutional law and reverse the decision of the Florida Court of Appeals.

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Dated: July 3, 1986

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